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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **SAN JOSE DIVISION**

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 vs.

14 SMALL BUSINESS CAPITAL CORP.;
15 MARK FEATHERS; INVESTORS PRIME
FUND, LLC; AND SBC PORTFOLIOS,
LLC,

17 Defendants.

Case No. CV12-03237

**RECEIVER'S TWELFTH INTERIM
REPORT**

Ctrm: 4 - 5th Floor

Judge: Hon. Edward J. Davila

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1 Thomas A. Seaman ("Receiver"), Court-appointed permanent receiver for Small
 2 Business Capital Corp. ("SBCC"), Investors Prime Fund, LLC ("IPF"), SBC Portfolio
 3 Fund, LLC ("SPF") and their subsidiaries and affiliates, including Small Business Capital,
 4 LLC ("SBC LLC") and SBC Senior Commercial Mortgage Fund, LLC ("SCMF")
 5 (collectively, "Receivership Entities"), submits this Twelfth Interim Report. The Receiver
 6 has previously filed eleven quarterly status reports. This Twelfth Interim Report covers
 7 the Receiver's activities during the three-month period from October 1, 2014 through
 8 December 31, 2014, and also provides inception-to-date accounting information.

9 **I. EXECUTIVE SUMMARY**

10 Operations of the Receivership Entities were stable and generated cash during the
 11 fourth quarter of 2014. Operating revenue for the quarter was \$459,674.87 and is
 12 comprised of loan interest income of \$228,873.88, servicing revenue of \$230,661.99, and
 13 late fees of \$139.00. The operating expenses of managing the assets and administering the
 14 receivership estate paid during the quarter, including servicing fees of the receiver for
 15 August and September, were \$56,099.75. The loans generated a profit for the quarter of
 16 \$393,065.37. Total receipts were \$4,130,012.63, which includes deposits on the loan sales
 17 of \$1,113,721.93, while disbursements were \$2,026,833.87 and the cash balance increased
 18 by \$2,103,178.76 from \$5,772,806.01 to \$7,875,984.77.

19 Significant progress was made in servicing and resolving non-performing loans.
 20 The loans are being properly serviced and the Receiver is in compliance with all
 21 requirements of the Small Business Administration's ("SBA") SOP 5057, the standard
 22 operating procedure that SBA lenders are required to follow. Collection efforts on
 23 problem loans have been successful. Specific actions taken on various problem loans are
 24 set forth in detail below.

25 During the quarter, the Receiver marketed the portfolios for sale in accordance with
 26 the Court's May 9, 2014 order approving the sale procedures for loan portfolios. In
 27 December 2014, the Court approved the sale of the 504/FMLP loan portfolio and non-SBA
 28 loans to the highest bidder and the sale closed in January 2015. The sale price of the

1 504/FMLP loans was 110% of the retained portion of the unpaid loan balance. The non-
 2 SBA loans sold for 60% of the unpaid balance.

3 Efforts to sell the 7-A loans and the SBA license continue. The highest bidder was
 4 selected and the Receiver expects to file a motion approving the sale shortly. Assuming
 5 the sale is concluded to the current buyer, the 7-A loan portfolio will sell for approximately
 6 93% of the retained portion of the unpaid balance of the loans. The SBA license will be
 7 sold for \$700,000 as part of the same transaction.

8 In accordance with the Court's prior Order Approving Distribution Plan and
 9 Authorizing Interim Distribution, the Receiver has notified the Commission of his intent to
 10 make an interim distribution and expects to make this distribution to investors within the
 11 next two weeks. The total amount of the interim distribution is expected to be \$7,000,000.
 12 This second distribution of \$7,000,000, together with the first distribution of \$15,000,000
 13 and funds investors received prior to the receivership, will bring the recovery for all
 14 investors up to 59.5% of the amounts they invested. Investors who received more than
 15 59.5% of their investment prior to the receivership will not participate in the second
 16 distribution.

17 The sale of the 7-A loans and SBA license will lead to a third distribution. The
 18 timing of the third distribution will depend upon the sale closing date and perhaps the
 19 timing of the Receiver's proposed closing of the receivership case.

20 **II. SUMMARY OF RECEIVER'S ACTIVITIES**

21 **A. Operations and Accounting**

22 1. Post-Receivership Receipts and Disbursements

23 Attached hereto as Exhibit A are accounting reports reflecting the post-receivership
 24 receipts and disbursements. Exhibit A provides cash basis financial statements through
 25 December 31, 2014, and includes a Profit and Loss Statement, Balance Sheet, and a
 26 redacted General Ledger for October, November and December 2014. The total gross
 27 receipts to the estate during the three-month period were \$4,130,012.63, comprised of loan
 28 interest income of \$228,873.88, loan servicing income of \$230,661.99, late fees of

1 \$139.00, bank interest income of \$1,198.24, net loan payments from borrowers owing to
 2 participants in the amount of \$1,942,156.64, and loan principal repayments of
 3 \$613,260.95.

4 Total disbursements during the quarter were \$2,026,833.87, payments to lending
 5 participants of \$1,942,156.64, advances to borrowers added to the unpaid balances of the
 6 loans of \$28,577.48, and operating expenses of \$56,099.75, which includes August and
 7 September servicing fees.

8 The Profit and Loss statement on page 1 of Exhibit A provides a summary of all
 9 operating expenses and costs of administration. The Receiver was holding cash in the total
 10 amount of \$7,875,984.77 as of December 31, 2014. The unpaid balance of the retained
 11 portion of the loans is \$14,218,397.79 as of December 31, 2014, without adjustment for
 12 loan loss reserves and net of the deposit received on the 3AM foreclosure sale discussed in
 13 further detail below. From the inception of the receivership through December 31, 2014,
 14 the total gross receipts are \$46,117,322.94, comprised of cash on hand at the time of the
 15 Receiver's appointment of \$10,249,494.45, loan interest income of \$2,822,633.63, loan
 16 servicing revenue of \$2,903,088.21, net loan payments from borrowers owing to
 17 participants in the amount of \$18,671,776.94, loan principal repayments of \$8,883,055.05,
 18 rental income of \$50,830, Coast Capital revenue of \$73,154.62, late fees of \$39,257.99,
 19 refunds of \$56,785.28, proceeds from asset sales of \$1,242,838.22, deposits on assets sales
 20 of \$1,113,721.93, and bank interest income of \$10,686.59.

21 From inception of the receivership through December 30, 2014, the total
 22 disbursements were \$38,241,338.14, comprised of distributions to investors of
 23 \$15,023,143.49, payments to lending participants of \$18,187,340.00, operating expenses
 24 of \$1,078,836.81, Receiver's fees of \$1,168,293.95, Receiver's counsel's fees and expenses
 25 of \$735,825.13, taxes of \$814,983.17, payments on the Natoma REO mortgage of
 26 \$400,140.04, Feathers' living expenses of \$30,000, and loan funding and advances of
 27 \$332,716.69.

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1 2. Receiver and Professional Fees and Costs

2 The Receiver's fees for the quarter were incurred as follows:

3 October 2014 \$77,031.00

4 November 2014 \$67,847.00

5 December 2014 \$69,839.00

6 From inception through December 31, 2014, the Receiver incurred fees of
 7 \$2,188,970, or 4.7% of the gross receipts for the 31-month duration of the receivership, an
 8 average of \$70,612 per month.

9 Allen Matkins' fees and costs for the quarter were approximately \$98,077.23 or
 10 approximately 2.3% of the gross receipts to the receivership estate. From inception
 11 through December 31, 2014, Allen Matkins' incurred fees of approximately \$1,130.633.01
 12 (paid and unpaid) or approximately 2.4% of the gross receipts.

13 To date, \$1,904,118.78 has been paid in Court-approved professional fees and costs
 14 to the Receiver and his counsel, representing 4.1% of gross receipts. The Receiver's
 15 unpaid fees through December 31, 2014, are approximately \$1,020,676.35 and Allen
 16 Matkins' unpaid fees and expenses are approximately \$394,807.88. The total unpaid
 17 professional fees are therefore approximately \$1,415,848.23..

18 The Receiver has operated the Receivership Entities efficiently at a vastly lower
 19 cost than prior to his appointment. More specifically, prior to the appointment of the
 20 Receiver, the operating expenses of the Receivership Entities were \$290,000 per month.
 21 This resulted in a cash shortfall of \$490,000 per month and the equity of the Receivership
 22 Entities was dissipating rapidly. As discussed above, the cash flow is now stabilized and,
 23 excluding the \$15 million distribution to investors, the cash balance has increased by over
 24 \$12.5 million since the Receiver's appointment. The Receiver's fees associated with
 25 operating the companies, as well as for administering the receivership estate, and
 26 marketing the loan portfolios for sale were approximately \$215,000 in the third quarter (on
 27 average, \$71,600 per month), or 75.3% less than the Receivership Entities' operating
 28 expenses prior to the Receiver's appointment.

1 3. Loan Portfolio, Loan Servicing and Watch List

2 The Receivership Entities held 52 loans as of December 31, 2014, with unpaid
 3 principal of approximately \$14.571 million. Portions of the majority of the loans had been
 4 sold to unrelated parties, with the remaining portion retained by the Receivership Entities.
 5 All REO properties formerly held by the Receivership Entities as a result of previously
 6 defaulted loans have been sold pursuant to the Court's order authorizing such sales.

7 The Receiver has aggressively enforced the rights of the lender and made
 8 significant progress in collecting and resolving problem loans. When the Receiver was
 9 appointed there were 72 loans. Twenty of these loans have since been paid off in full, or
 10 liquidated either by a foreclosure sale with the collateral being subsequently sold, or by
 11 accepting a discounted pay-off.

12 The sale of the 504/FMLP and non-SBA loans, completed in early January, 2015,
 13 reduced the watch list to three 7(a) loans and one 504/FMLP loan, the 3-AM loan that is in
 14 default was deliberately withheld from the 504/FMLP sale. The status of each of the
 15 watch list loans is as follows:

16 Z&H Happy Hands Corporation dba Happy Hands Car Wash: The unpaid principal
 17 balance for this loan is \$1,727,335.71. This is an SBA 7(a) loan secured by a first trust
 18 deed on property located at 1205 W. 17th Street, Santa Ana, California and a second trust
 19 deed on a multi-unit property located at 17616 Sherman Way, Van Nuys, California. SBC
 20 LLC owns 10% of this loan. To date, the loan is current and borrower continues to pay as
 21 agreed. All current and delinquent property taxes have been paid. The business appears to
 22 be operating at a profit. No evidence of any deferred maintenance was noted at the
 23 property during the most recent site inspection. The loan is well secured by the real and
 24 personal property collateral as well as personal guaranties. The Receiver continues to
 25 monitor the loan.

26 Bragato Paving Company: The unpaid principal balance for this loan is
 27 \$1,735,366.64. This is an SBA 7(a) loan secured by a first trust deed on property located
 28 at 500 – 506 Bragato Road, San Carlos, California and a second trust deed on property

1 located at 2141 San Carlos Avenue, San Carlos, California. SBC LLC owns 10% of this
 2 loan. The loan is current. The borrower has an installment payment plan with the San
 3 Mateo County Tax Collector's Office for the prior year delinquencies. The borrower had
 4 also accrued significant late charges which the Receiver has now fully collected over time.

5 Meyers Castle: This was added to the watch list during the first quarter of 2014.
 6 There are two loans with unpaid balances of \$1,541,046.79 and \$1,120,452.65
 7 respectively. SBC LLC owns 24% of these loans. Payments for the last few months have
 8 been late. The Receiver continues to assess late fees. Previously, the borrower agreed to
 9 pay the outstanding late charges under an installment payment plan, and paid them. The
 10 borrower failed to pay their insurance premium and the Receiver paid the cost of the
 11 premium and added it to the unpaid balance of the loan in order to protect the collateral.

12 3 AM, LLC: The unpaid balance on this loan is \$4,170,874.68. The principal
 13 portion is \$3,712,476. This SBA 504 FMLP loan was purchased by SCMF from an
 14 unrelated party. Subsequently, 85% of the loan was pooled and sold to an unrelated party.
 15 The loan is secured by a first trust deed on a hotel property located at 8850 Hampton Mall
 16 Drive North, Capitol Heights, Maryland, as well as a UCC-1 security interest in the
 17 furniture and fixtures at the hotel. The foreclosure sale was conducted on December 2,
 18 2014. The property was sold to a third party for \$4 million. There is a ratification process
 19 pending in the Maryland courts and the sale should close shortly. The sale proceeds are
 20 \$4,000,000. The retained portion owned by the Receivership Entities is \$600,000. The
 21 Receivership Entities will receive 100% of the principal owed, collection costs, and a
 22 portion of the accrued and unpaid interest.

23 It should be noted that the foreclosure process concerning the 3AM LLC loan was
 24 concluded after much difficulty and expense due to the borrower filing multiple
 25 bankruptcies and fighting the lender in bankruptcy court. Accordingly, the 3AM LLC loan
 26 consumed considerable resources of the receivership estate in terms of cash payments to
 27 cure the property taxes, payment of legal and collections expenses, force placed insurance,
 28

and other expenses, in addition to the cost of complying with the SBAs procedures for administering foreclosures.

B. Analysis of Loans

The following table provides the number and amount of loans held by each entity.

Loan Summary	IPF	SBC LLC	SPF	Sen. Comm. Mortgage	Total
7(a) SBA Loans					
# of loans	-	34	-	-	34
\$ value	-	5,689,493	-	-	5,689,493
504 SBA Loans					
# of loans	1		4	10	15
\$ value	1,031,150		3,063,669	2,712,217	6,807,036
Non-SBA loans					
# of loans	1		2	-	3
\$ value	2,025,511		49,835	-	2,075,346
Total					
# of loans	2	34	6	10	52
\$ value	3,056,662	5,689,493	3,113,504	2,712,217	14,571,875

Now that the sale of the 504/FMLP and non-SBA and has been completed and the price of the 7-A loans has been tentatively set, the previously established loan loss reserve of \$985,000 is obsolete and the values set forth above may be revised based on the sales prices as follows:

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		<u>Book value</u>	<u>Sale price</u>
1	7-A loans	5,689,493	5,291,228
2	504/FMLP loans	6,807,036	7,454,233
3	3AM loan	556,800	556,800
4	Non-SBA loans	2,075,346	1,240,345
5	Adjusted value of loans		\$14.542 million

7 **C. Litigation Against California Business Bank**

8 The Receiver filed an action against California Business Bank ("CBB") and the
 9 directors and officers named in the Receiver's complaint other than N. Aaron Yashouafar
 10 ("Individual Defendants") arising out of, among other things, misrepresentations made to
 11 the Receivership Entities in connection with the sale of CBB stock. The parties
 12 participated in a mediation with a Court-assigned mediator on November 19, 2013, in San
 13 Francisco. The case did not settle.

14 The Receiver filed his complaint stating state law claims in Los Angeles Superior
 15 Court on May 8, 2014. CBB moved to strike one paragraph of the complaint arguing that
 16 it contains attorney-client privileged communications. CBB also demanded return of the
 17 documents containing such attorney-client communications and sought disqualification of
 18 Allen Matkins. The Receiver opposed the motion, which the court denied without
 19 prejudice to CBB re-raising the motion as a later date. Among other things, the court also
 20 instructed the parties to participate in a second mediation, which took place on
 21 September 23, 2014. The case did not settle at mediation.

22 Following the mediation, CBB filed an answer to the Receiver's amended
 23 complaint. The case is now "at issue." CBB has served discovery upon the Receiver. The
 24 Receiver intends to pursue discovery as well.

25 **III. RECOMMENDED FURTHER ACTIVITIES**

26 Now that the proceeds of the 504/FMLP and non-SBA loans have been received,
 27 the Receiver recommends making a second distribution to investors. Pursuant to
 28 Paragraph 5 of the Order Approving Distribution Plan and Authorizing Interim

1 Distributions (the "Order") [Docket No. 711], Receiver has sought and received the
 2 approval of the Securities and Exchange Commission for the Receiver to make a interim
 3 distribution of \$7,000,000 to investors.

4 As set forth above the Receiver expects the 7-A loan and SBA license sale to be
 5 completed soon after the SBA approves the buyer and this Court approves of the sale.
 6 Confirmation of the sale will complete the liquidation of receivership estate's primary
 7 assets and the Receiver may be in a position to make a third distribution to investors. Once
 8 all other outstanding matters (including the CBB litigation) have been resolved, the
 9 Receiver will seek authority to make a final distribution pursuant to the approved
 10 Distribution Plan, final approval of receivership fees and costs, and an order terminating
 11 the receivership and discharging the Receiver.

12

13 Dated: January 27, 2015

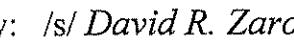
14 By: 
 15 THOMAS A. SEAMAN, Receiver

16

Dated: January 27, 2015

17 ALLEN MATKINS LECK GAMBLE
 18 MALLORY & NATSIS LLP

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By: 
 20 DAVID R. ZARO

21 Attorneys for Receiver
 22 THOMAS A. SEAMAN

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